

Jordan Brady Loewen ([00:00:09](#)):

Hello, and welcome to the mapping the doctrine of discovery podcast. The producers of this podcast would like to acknowledge with respect the Onondaga nation, fire keepers of the Haudenosaunee, the Indigenous peoples on whose ancestral lands, Syracuse University now stands. And now introducing your host, Philip Arnold and Sandy Bigtree.

Philip P. Arnold ([00:00:30](#)):

Hello and welcome back to mapping the doctrine of discovery podcast. I'm Phil Arnold, associate professor and chair of the department of religion at Syracuse University, as well as core faculty member and native American Indigenous studies. And I'm also the founding director of the center of great law peace center at Onondaga lake.

Sandy Bigtree ([00:00:50](#)):

And hello again, I'm Sandy Bigtree citizen of the Mohawk nation at Akwesasne. I grew up in Syracuse, New York, a couple miles north of the Onondaga nation. Phil and I are both founding members of the Indigenous values initiative, which was formed to foster a collaborative educational work between the academic community and the Haudenosaunee to promote their message of peace that was brought to Onondaga lake thousands of years ago. Today, we will be talking to Joe Heath who has been legal counsel for the Onondaga nation for many decades. And he will go into that history with you.

Sandy Bigtree ([00:01:32](#)):

But I would like to make a note that Joe is not Haudenosaunee, and there is a reason for that. The Onondaga are unique and that they have never accepted any money from the federal government because of their steadfast awareness that they are sovereign and they've never allowed BIA governments into their territory and to work closely with an Indigenous lawyer in the United States could be problematic because lawyers have to take an oath to the US and the Onondaga and traditional Haudenosaunee do not view themselves as under the umbrella as United States. The US is not a guardian of the United States. They stand autonomous.

Philip P. Arnold ([00:02:29](#)):

So it's great to have you here, Joe. Can you do a brief introduction to yourself?

Joe Heath ([00:02:38](#)):

Well, thank you, Phil. And thank you Sandy. It's my pleasure to try to help with this educational podcast. It's very clear my name is Joe Heath, I have been counsel for the nation since early '80s. Actually, I began to do work with traditional Haudenosaunee in the late '70s. The first time was at Akwesasne and the troopers had the road shut down and there had been a confrontation up there and criminal charges had arisen and I went in by boat because that was the only way you could get to Akwesasne at the time. So that's how long I've been lucky enough to work with traditional Haudenosaunee. Even before that what people call it civil rights pioneer because this is 50 years this year. It marks the Attica prison rebellion. And I began working on that my third day of law school. I've had a very interesting career and being able to work with the Onondagas and the Haudenosaunee is just a tremendous honor for me.

Philip P. Arnold ([00:03:57](#)):

You're just the right person for this conversation, Joe. We still appreciate your work and help out here. I would like to start just by your discussion about the doctrine of discovery. I know you've been working on this with several lawyers around the country, and I would like for you, from your own perspective to describe the doctrine of discovery and what is really essential for us understanding that in terms of the US law.

Joe Heath ([00:04:31](#)):

Well, I think if folks remember anything from this discussion, to me the doctrine is basically an excuse for colonialism. That's what it is. And it's European white Christian colonialism that for 500 years has inflicted white supremacy on so many different parts of the world. It's only been recently that I stop tearing my hair out over how inconsistent US Indian law is because it's all made up and what the doctrine says. And what is the basis of US Indian law is that as soon as a Christian nation discovers an area that is populated by non-Christians. In other words, it was first aimed at Africa. And it's very similar to the white supremacists Christian centered philosophy that drove the crusade. But in the middle in 1450s, the Pope began to sanction colonialism in Africa. And then after Columbus stumbled into the Caribbean in 1492, the Pope issued a new papal bowl and said that all of the land there was subject to European exploitation and colonialism in the name of establishing the church.

Joe Heath ([00:06:04](#)):

And the other thing to remember very much is that the doctrine of Christian discovery and domination. Now I want to come back and talk about both of those words, if we can, is the basis of US Indian law. And it's the basis of US Indian law because Johnson versus Macintosh was issued by then chief judge John Marshall in 1823. Now we need to remember that Marshall was a notorious land speculator as were all of the founding fathers, Washington, Jefferson, Franklin. They all were engaging in the money-making scheme of supposedly buying an interest in Indigenous land on the west of the Appalachians where nations were still living and thriving and preserving, and then taking that interest in selling it for profit. So we need to remember that wealth in the early Republic was created by slavery on one hand and by flipping Indian land and land speculation on the other hand.

Joe Heath ([00:07:12](#)):

And in order to justify that land speculation, Marshall brings the doctrine, a Christian discovery and domination into US Indian law. And he could have done that in about five pages, but instead he made up all of this. He knew it was so bogus. I think he calls it extravagant in the opinion itself, he knows that this is a construct, an excuse to take the title away from the Indigenous people. And once you take the title away from the Indigenous people and say they only have a right to live on the land until we distinguish that right, that's the domination and control that the United States has attempted to exert over Indigenous people for 500 years and it's totally based on the doctrine, the Christian discovery and domination.

Philip P. Arnold ([00:08:11](#)):

That's terrific. Could you say a little more about how this ruling from 1823 persists today? I mean, how is it still being deployed? How are we to understand it and its effect on our lives now?

Joe Heath ([00:08:32](#)):

Well, I think most of your listeners will be somewhat familiar with the Haudenosaunee land rights and land claims, Oneida filed a land claim over 40 years ago. The Cayuga filed 30 years later, the Onondaga

filed in 2005. And after decades of intense legal work and historical hearings, a series of victories were mounting up. And then in 2005, the Supreme court totally wiped out all of those victories and issued the decision in the city of Cheryl versus the United Indian nation, which is eventually and very quickly led to the dismissal of all three of those land rights actions. And the issue in the city of Cheryl was that the Oneida nation had been buying back land that had been illegally taken from them by New York state. They had a court decision that said New York knowingly, illegally took the land.

Joe Heath ([00:09:46](#)):

And so they use some of their gambling proceeds to buy back land within the boundaries of their candidate or recognized reservation. And so they said, "Look, it's our land, we bought it back. We have total jurisdiction over it in sovereignty again. And therefore we're not going to pay your local taxes." In addition to taxes are illegal under New York law, but that issue gets kind of pushed aside here. So the city took them to court and eventually the Supreme court said first of all, it's an eight to one decision that was written by Ruth Bader Ginsburg. It's a decision that's very hard to undo given the weight of the majority and her first footnote in Cheryl refers back to the doctrine of discovery and to the Johnson versus Macintosh case and reaffirms the doctrine of discovery in 2005. That's still the basis of US Indian law.

Joe Heath ([00:10:52](#)):

And subsequent to that within a couple of months, the second circuit dismissed the Cayuga land rights action, because it would be disruptive of the settlers expectations. A few years later, they dismissed Oneida. And then in 2012 by then the Northern district had already dismissed the Onondaga case without even a hearing or a chance to present our evidence. And so on Columbus day in 2012, I got to argue that appeal in the second circuit Columbus day, they gave us 10 minutes and they summarily dismissed the case because they said your treaties are too old. And the issues you raised, which were just to have the illegality of the taking recognized, they said, those are too disruptive to what we think the settlers justifiable expectations. It's all a total made up set of rules that changes every time we go to court, but the fundamental basis for that is the doctrine of Christian discovery and domination Johnson versus Macintosh, you don't have a right to the land. Our right to the land is superior to you because we're Christian and white.

Joe Heath ([00:12:13](#)):

That's still the basis of us Indian law in the United States. And it carries on today with the very, very imperial power that the United States claims to have and that's plenary power. And we could do another podcast just on that, but essentially what the United States claims is, well, yeah, we made treaties with you hundreds and hundreds of treaties with you, but we can break any one of those or any part of any one of those when we want to not exactly international law, but that's the concept of plenary power that keeps being reinvoke by the Supreme court every time they write an Indian law and decision. So that's the problems that we have the laws of land, which is so hard for truly Indigenous people and so central to the economic engine of capitalism, that it's just a fundamental contradiction here. And we have to keep educating people about the damage of the doctrine of Christian discovery and domination.

Philip P. Arnold ([00:13:29](#)):

So going back to this idea of plenary power, which after all is another kind of creative concept of international law. Isn't it true that these treaties that treaties in general are mentioned in the

constitution of the United States? If it's as fundamental a concept as to the constitution, then why don't these treaties still have force in the Supreme court?

Joe Heath ([00:14:00](#)):

Well, you can't have a conversation about US Indian law. That goes more than two sentences without a very serious question of why, about every aspect of it. And the problem is that you're correct, the constitution is very clear to article six, the second clause in article six, among other things, treaties will be the Supreme law of the land and that all states and the judges there and will abide by them seems pretty clear. That doesn't apply to Indian treaty because the United States cannot live up to the promises. And those were pretty limited promises they made, they just cannot live up to the promise and they continually break treaties. And often what that means is taking more and more land, totally illegally in violation of treaties. We show them that it's standing lock because the confrontation there. And I was lucky enough to go to standing lock for two separate weeks four years ago. That confrontation, that resistance to the black snake was on land that was protected by the original treaty with the Lakota people that United States then came back and seized illegally.

Joe Heath ([00:15:33](#)):

There is a court case that recognizes that. And yet they just violated the treaty and eventually had to pay a bunch of money for it. Treaty violations continue today. Very much so because the United States has to admit that the doctrine of discovery and domination and therefore the claim to title of all of this Indigenous land are illegal, immoral and we must remove them from United States jurisprudence and that tosses all of US property law on a chair, but we have to come to grips with the fact that we stole this land. And then we made up excuses for stealing the land. That's what the doctrine is. It's an excuse for colonialism. It then becomes an excuse for termination, for ethnic cleansing, for forced assimilation in boarding schools, because we keep trying to get rid of the Indian problem. The Indian problem is that there still Indians here.

Joe Heath ([00:16:39](#)):

So all of it is interrelated and based upon the doctrine of Christian discovery and domination, and it is so artificial and wrong and immoral that when it's challenged in the courts, they have to make up some new nonsense in order to justify the result that they want to get to. They can't do it pursuant to the constitution. They can't do it pursuant to international law. They can't do it pursuant to equity. They always fall back on, well, we're the white guys, we're superior. We get to take your land. You need to do what we tell you to. That's the problems that we still confront every day. And that confront Indigenous people every day.

Philip P. Arnold ([00:17:25](#)):

It seems like a lot of what we're talking about is reparations here. Reparations look very different for Indigenous peoples than reparations to African-Americans for example, this is a very live issue in the US right now. I wonder if we could go back though, because another fundamental issue here that you raised was the issue of property and the creation of property, which is diametrically opposed to an Indigenous perspective and Indigenous worldview. I would be interested in your ideas around how property is created whole cloth out of the doctrine of discovery and how we might be able to address that worldview. That seems so pervasive throughout American culture in the modern world.

Joe Heath ([00:18:25](#)):

Well I think we could look back at the history of New York state and perhaps learn from that in terms of property creation, and I do this, when I try to talk about the doctrine to various classes, I show a map of 1776 and essentially white settlements were all to the east of Schenectady. There were no white settlements, any further west. And the map very clearly says country of the six nations. So that's the beginning of the revolutionary war. And of course we know we had the horrible Sullivan Clinton rage in 1779. And by the end of the war, New York just had an insatiable appetite for Haudenosaunee land. They had seen how beautiful it was. Many of their soldiers took part in the Sullivan Clinton campaigns, and they were in debt up to their way beyond their rivals, to their soldiers and everybody else.

Joe Heath ([00:19:33](#)):

And so New York viewed Haudenosaunee land as a source of wealth. And so they created the military tracks and people that have seen those. And perhaps we can add a map or two of those to the study guide. They just, what was the woods? And that's how the Haudenosaunee thought of most of the land, they did not have borders. They thought of it in terms of watersheds and where are the good hunting and fishing were. But it was open. There were no borders, fences, things like that. And all of a sudden New York puts this grid on top of that and says, this is how we can divide up this land we're going to take, and we're going to take it despite the warnings and the written warnings of the federal government, despite the limits of the constitution, despite the 1790 trade and intercourse, we just have to take this land because we have no other source of money, they've fought with Massachusetts over it.

Joe Heath ([00:20:35](#)):

They created this grid of property under the unfulfilled promise of turning most of that over to soldiers in the revolutionary war, it out that that was not what happened primarily, land speculators bought up the right to those lots and then sold them for profit. And so New York state took the woods and turned it into grids and created the towns that we now see and created property, and then created a market for that property. That's the source of wealth that New York had to draw upon. And that's very much true of many, many other states. Some of the details are not there, but that's how property got created in New York state. And many times when we are handling deeds or researching property, we see that it goes back to the original Onondaga title that was still there after the revolutionary war until New York engaged in the five illegal stealing of Onondaga land. That's how property was created. They just drew it on a map and said, this particular parcel is worth this much money. Once you do that, and you start trading it, you've made a cultural decimation of the Indigenous culture.

Sandy Bigtree ([00:22:16](#)):

So Joe, what followed as soon after the Sullivan Clinton campaign. We all know was the Erie canal. And I know Jake Edwards had often spoken on what that had done to Haudenosaunee territory. It was literally a dam that just cut off all the waterways running north and south throughout the entirety of what became the empire state. If you could relate some of this to more specifically to the environment I know in later years the next highway was 81 that was going planned to go right through the Onondaga nation. And you were involved in all of that early in your career. If you could talk a little about that. And then the strange event that happened and pretty much maintained a peaceful demonstration at the culmination of that protest. That was quite an interesting story.

Joe Heath ([00:23:22](#)):

Well, the Erie canal was particularly damaging and Erie canal is very much related to how New York state could move the salt that they were stealing from the Onondaga land near Onondaga lake, how they

could get that salt to markets? That's what the Erie canal, one of the primary functions of the Erie canal. And most people that have lived in Cherokee for any amount of time are aware that it's sometimes called the salt city because there was a salt industry that developed there in the 1790s and was very, very active until the civil war. Salt was more valuable than gold during that period of time, because it was the only way to preserve food, primarily meat and fish. And so most of the salts sold in the United States until the civil war came from Onondaga, came from Onondaga lake and the and show New York, one of the first takings that New York made was to seize the land around the lake.

Joe Heath ([00:24:36](#)):

The Canandaigua treaty had recognized that the Onondagas were entitled to a mile around the lake and then a larger 10 miles square bucks that was to the south of lake. New York had to violate that protection because they had to have the salt again, another source of wealth. And so the salt industry developed there and it had horrible environmental impacts in terms of massive cutting of trees before they figured out that they could use the sun to evaporate the salt. And hence we have solar street here, but salt became the reason to take the Onondaga land. And then the Erie canal came in so that they could move it over to Albany, down to New York and then down the seaboard. And to some extent they were beginning to open up the west.

Joe Heath ([00:25:36](#)):

So that's the purpose of the canal, and it also served a secondary purpose of allowing white settlers, a much less difficult way to move with. And so you could get on a barge in Albany and end up in Syracuse and then go steal some Indian land without much less trouble than it was before. And so it really significantly enhanced the volume of white settlers that began to take over Onondaga and other Haudenosaunee land and so that was the primary problem that Erie canal caused. And moving forward to 81. I grew up north of here in a town that was eventually connected to Syracuse by 81. So I remember when it was being built in the '60s. You actually had a union laborers book in the '60s and worked on two sections of 81 and 55 and 66. But the story that I remember the most about 81 was when the state was trying to expand to a passing lane on the Onondaga nation, they had already run the road right through their territory, stealing hundreds of acres again.

Joe Heath ([00:27:06](#)):

And because of the steep hill, they wanted to add a passing lane. And the Onondagas finally said, "No, you're not going to do that." And they resisted and sat on the bulldozers. And at one point the oldest tell of when the troopers were advancing on the Onondagas thinking, well, this is a good day to die. That was a common statement among Indigenous resistors in the '70s. And suddenly without explanation those troopers turned around, shouldered their shotgun and got back in their cars and drove up. It turns out that we learned later that those troopers went to Attica and then engaged in the horrible massacre and brutality that happened there. So that is some of the history of 81. But we need to understand that both transportation highways and that's what they are, were meant to reduce the influence of Indigenous people on their land and to increase the influence and authority of settlers.

Joe Heath ([00:28:22](#)):

And that's what Onondaga has had to endure for 300 years. Now the nation is working to reacquire territory and they certainly are entitled to much more land. There's no doubt that they had two and a half million acres that was their stewardship before European colonization. And they need more land. And so we're trying to convince the county of Onondaga to keep its promise to return land on the lake



to the nation so that the nation and the women and children can go out there and have a ceremonial sacred relationship with their sacred lake. And we're now 11 years into that promise. And it's not at all clear that the county has the political will to carry through that promise the way they should. 1,000 acres down in the tele valley that Honeywell destroyed some sections of that we're working to get returned to the nation because you'd have the headwaters of Onondaga Creek and the possibility of clean fish for their people, which they no longer have access to.

Joe Heath ([00:29:45](#)):

And yet when we work with state and federal agencies to get that land back, we have this constant problem of them insisting that they have a right to tell us, tell the nation how to preserve that land. This is after destroying it. We also have people offering land to Denise. So the concept of reparations was raised earlier by Phil. And I think that's a discussion that we really should continue to advance. And in my mind, the only reparation that we can make the primary reparation that we have to think about is the return of significant amounts of land and waterfront. A third of the Onondaga diet used to be fish, their loss of that clean protein and the other benefits that come from fish is one of the primary symptoms of colonialism on the Onondaga people in that harm to the health of the people from the loss of those fish.

Joe Heath ([00:30:56](#)):

Their sacred lake is so polluted that no one should be eating the fish from there, their Creek, where the oldest remember getting trout at night with a kerosene lantern and spear fishing, you have to have a pretty clean Creek to do that. Oren and Irv, remember going out there at night as teenagers and getting large trout. There's no more trout in Onondaga Creek because of the damage done upstream of the nation by the solution salt mining that allied process and Honeywell engaged in as part of their imperial ruination of the sacred lake at Onondaga lake. All of this is interrelated. Land needs to be returned. It needs to be returned without any condition. And that's what we really should be talking about. And then we shouldn't have to deal with the counties whining about their loss of tax revenue that was illegal to begin with. And so these are the current contradictions and work that the nation has to continue to work at because they need more land, they're entitled to more land. And that's what we need to be working on practically, as we continue to educate people about these horrible colonial philosophies.

Steve Newcomb ([00:32:26](#)):

Do you need help catching up on today's topic or do you want to learn more about the resources mentioned? If so, please check our website at [podcast.doctrineofdiscovery.org](http://podcast.doctrineofdiscovery.org) for more information. Now, back to the conversation.

Sandy Bigtree ([00:32:47](#)):

Well, you've laid out very powerfully this legacy of the doctrine and its impact on the environment in the land and how it deeply affects every living human being on this planet, because there is no acknowledgement or concern given to air, clean water, soil, clean soil, we're kind of facing this right now as a human being.

Philip P. Arnold ([00:33:18](#)):

Yeah. As a species we're in a real fix right now, and you're known quite well-known around the state for being advocate for environmental healing. You have been out there in the anti-fracking course supported by the Onondaga nation. And I think this is an important line between the doctrine of

discovery and environmental devastation that unifies a lot of people around these issues. And I wonder if you could say more about that and also of your work, continuing work around anti-fracking and environmental issues.

Joe Heath ([00:34:09](#)):

Well, I'm trying to remember the first time I heard Oren Lyons talk about the ice melting in the north, but it was in the '80s I think. Oren and others, Audrey were active in the environmental awakening 30, 40 years ago. And it's because Indigenous people are much more closely connected with the land and the water and non Indigenous people. And so Oren would come back to the long house and give speeches outside the nation about climate change. It wasn't called that then it was global warming. I think we called it then. And we began to understand that more because Oren was out meeting with people. And because of the Haudenosaunee and other Indigenous people have a mandate to be stewards of the natural world to preserve and protect the land and the waters and all of the creatures for the seven generations yet to come. They feel that stewardship obligation very, very deeply, it's something that I've been able to understand a little more as we've worked together.

Joe Heath ([00:35:36](#)):

So once you begin to think about climate global warming, and then you get what we call the frack attack, that's a pretty good awakening. The Haudenosaunee environmental task force was the first group in New York state did call for a complete banning of fracking. And it was viewed as radical at the time. Most of the environmentalist thought that, oh, we can regulate it enough and that'll make it safe. Well, the Haudenosaunee saw very quickly that this was insanity and called for it's banning right away. Onondaga has a drinking water system that they had installed about 10 years prior to this time, which is around 2009. I think all of this fracking key matters the most intensively and that drinking water system brings clean water to every home on the territory. It's constructed entirely with Onondaga money, no state or federal money.

Joe Heath ([00:36:50](#)):

It's a spring fed system. And the watershed for those springs is outside the currently recognized territory. And once we began to understand fracking and the leases that would result in fracking, we discovered that there were leases by the land owners of those outside properties within the watershed of the spring and had fracking occurred there, there was an excellent chance that that whole water system would be jeopardized. And so Onondaga leaders became very involved in the movement over the next 10 years. But really five and 10 years, because when there was a rally in Albany, an Onondaga speaker opened the rally and they told me, you go out and work on that Joe. And that's one of the wonderful roles I've been able to play as somewhat of a bridge between the outside environmental movement and the leaders of the Onondaga.

Joe Heath ([00:37:56](#)):

And so Onondaga joined hand in the largest grassroots resistance in upstate New York, hundreds of thousands of people stopped big oil and big gas and kept fracking from coming into New York state because, and in the process, we educated a lot of people about the need to stop burning fossil fuels and the need to work on truly renewable energy and to take a responsible position now, before it was too late, this is integral to the Onondaga teaching and work, and my being able to help with that in the frack resistance because I have some public speaking experience at first, we had to educate people, what is fracking? Can they really be this crazy to be using explosions underground? Just the other day, I saw an



article that reveals that very, very toxic chemicals were licensed by the EPA secretly and they were used in fracking. It's all in chain when you start taking about it.

Joe Heath ([00:39:07](#)):

And what we found was when we explain that to people, we've got more and more friends. And so it was a way of helping people work together to protect our land and water, and also to move their awareness closer to what is necessary for, we need to stop burning fossil fuels and we need to stop creating pipelines. And all of the accoutrements that go with the profits that go into the 1% and the rest of us suffer from, and the Onondagas and the Haudenosaunee are leaders in the environmental resistance in New York, across the country and to some extent worldwide, and that's because of their mandate of stewardship. And so that's one cultural approach.

Joe Heath ([00:40:02](#)):

The other cultural approach is that shown by Exxon and Honeywell and colonialism, which is exploitation, take whatever you can and make money off it. If that's people, tough we'll make them slaves. If that land tough we'll ruin it. If that's a sacred lake, we'll turn it into the most polluted in the world. This is what's happened as a result of the Doctrine Christian Discovery. And the more that we get to talk to people about the true vision of stewardship, instead of exploitation, that's the cultural difference that the Haudenosaunee bring and that I've been trying to learn for about 40 years.

Sandy Bigtree ([00:40:55](#)):

Joe, I know you're a Vietnam vet and through your career, learning about the doctrine of discovery, all this work, you've been involved with, has it impacted in any way, the way you've reflected on what we were doing in Vietnam, how that affected the Indigenous people there?

Joe Heath ([00:41:28](#)):

Well, I think I'd have to say not enough. Yeah, I was in the Navy from 1968 to 1970. I thought it was a clever way to avoid you being drafted and being married to an infantry officer after I scraped together enough credits to graduate from Syracuse. And very quickly I learned that I could not take an active role in the military given what was going on and they wanted me to fire a white phosphorus at them, and which is the same as napalm. Then at one point they wanted to train me to be the missile officer on the submarine that had the Polaris submarine that could kill 12 million people with push of a button. It begin to sink when that sort of stuff is pushed at you. And then you begin to study what the government is saying about what's going on there. And I was lucky enough to be aided by the Quakers in Philadelphia. Then I was able to be eventually discharged on a blue is a conscientious objector. Until now is clearly a horrible examples of colonialism and white supremacy and capitalism because the United States claimed the right to carpet bomb those countries, to drop napalm on those countries to use agent orange.

Joe Heath ([00:42:57](#)):

We have a neighbor that was victimized by agent orange, and he was in the motor pool over there. It was a war built on lies and colonialism. And the fact that the white United States felt that it could dictate to the people of Vietnam, Cambodia, Thailand, what their government should be, what their economic system should be. And in the process of that we killed millions of Vietnamese people, killed tens of thousands of American kids. We ruined hundreds of thousands of veterans lives because the veterans that came back, they knew what they had been made to do was not what should have been done. War

is an extension of the doctrine of Christian discovery and domination. War as we know it is the Europeans start wars in order to get more land and money. That's what we've seen. That's what it's about.

Joe Heath ([00:44:11](#)):

And it's time we understood that we have so much better ways of relating to people and the world other than dropping a napalm and flying B52s over their head. And the other thing I would say is it also that experience also taught me a great deal about the Catholic church and how are immoral it is. And that's because when I, in order to justify being a conscientious objector, you have to show that your resistance to war is religiously based. I had grown up in the church, I am now a recovering Catholic but, and I went to a priest to ask him to support my effort to make a statement against the war. And he rejected me. He couldn't do that. At the same time, we had priests in Cambodia using holy water to bless the B52s that were about to take off and carpet bomb, Cambodia, and Thailand and Vietnam, most of those in total violation of any international rule.

Joe Heath ([00:45:28](#)):

And it was very clear to me that the church was not about what they had tried to tell us it was about. And we also know, as we study the horror of Indian boarding schools, that the church was complicit in that up to just a disgusting role, that at least a third of the schools, the boarding schools and most people think of the boarding schools as the Canadian problem because of the three revelations of the mass graves. My prediction is that every boarding school has a mass grave of hidden children who died and were tried to be hidden, it's not just Canadian problem, there were 357 boarding schools in the United States. There were boarding schools in New York state, the Thomas Indian school over Cattaraugus. The Quakers [inaudible 00:46:27] over there. And many people from here were sent to Carla and the boarding schools, even our Bishop in Syracuse recently made the statement, the result of years of work and education by Onondaga.

Joe Heath ([00:46:45](#)):

The Bishop made the statement that the boarding schools are linked to the doctrine of Christian discovery, because it's that domination. That's the key word that Steve Newcomb keeps reminding us that we have to remember to describe this part. Discovery and domination. Domination means we're going to make those Indians into white people. That's what Pratt said. Colonel Pratt said, and he was the founder of the Carlisle, 1879. He actually refers back to Custer who shot the only good Indian is a dead Indian in the forecourt. And then he concludes by saying our goal is to kill the Indian, save the man, and the horrible impact of the boarding schools are a direct result of the doctrine of Christian discovery and domination.

Joe Heath ([00:47:39](#)):

And I was lucky enough to take part in a gathering and a walk on the 4th of July, just recently at Onondaga and listen to a couple of survivors of boarding schools and the historic generational trauma that still caused the Onondaga and every Indigenous community from these Christian boarding schools. It's very deep. It's very painful and it needs to be understood so that we can begin to heal from that. We are a long way from proper healing and reparations for our treatment of Indigenous peoples and an integral part in that long journey ahead of us an understanding of the doctrine of Christian discovery and domination and all of the ways that it has been used to try to destroy the Indigenous peoples and their cultures.

Philip P. Arnold ([00:48:51](#)):

Yeah. I'm so glad you raised the issue of the Indian boarding schools. It seems to be on everybody's mind these days and a lot of attempts to try to what arrive at some kind of framework for healing, particularly in Canada. But as you say, there are probably more than twice as many boarding schools in the United States than there are in Canada. I think probably most every native family in the United States has been touched by boarding schools negatively in the past. It's going to be something I hope that stays on the front edge of our awareness as we move ahead. I'm encouraged by secretary Halen's initiative to try to get at the root of this. And I hope that she can appreciate the doctrine of discovery in this heinous past.

Philip P. Arnold ([00:49:59](#)):

I want to take us back a little bit Joe again tying together the issues of the environment and the doctrine of discovery that you've been so involved with. And I'd like to quote to you the first passage of the Onondaga land rights action which you wrote and filed on behalf of the Onondaga nation. But I heard you many times quote this passage, which was inspired or written by [inaudible 00:50:41]. And I think it describes well, their understanding of peace or scandal which the center is named for that a peace between human beings can only be achieved when we're in proper relationship to the natural world. And that's exactly what Sid is talking about in this passage, which I'll read to you right now.

Philip P. Arnold ([00:51:10](#)):

The Onondaga people wished to bring about healing between themselves and all others who live in this region that has been the Homeland of the Onondaga nation since the Dawn of time, the nation of this people have a unique spiritual, cultural and historic relationship with the land, which is embodied in the Gaius Went Goa, the great law of peace. This relationship goes far beyond federal and state legal concepts of ownership or possession or other legal rights. The people are one with the land and consider themselves stewards of it. It is the duty of the nation's leaders to work for healing of this land, to protect it and to pass it on to future generations. The Onondaga nation brings this action on behalf of its people in the hope that it may hasten the process of reconciliation and bring lasting justice, peace and respect among all who inhabit this area. I wonder if you could comment on that for us.

Joe Heath ([00:52:21](#)):

Well you're right in reflecting that. That's not my writing actually. I mean I was one of the lawyers that filed it, but we had been speaking with the council for well over a decade about whether or not to file the land claim and in their wisdom directed as it's not a land claim, it's a land right action. We only want to have the court recognized that the land used to be ours, that it's our original territory and that New York knowingly took it illegally. And they also named five corporate polluters because that first paragraph that you just read was the essence of their efforts, which was the difficulty that the Onondaga leaders have of carrying that burden of stewardship of all of the two and a half million acres. And watching it be systematically destroyed by the dominant culture and having their voices ignored. And that was what went on forever until a little more listening to them has occurred recently.

Joe Heath ([00:53:41](#)):

They wanted to say, let's all work together to protect this land. And that's how we will achieve harmony and peace among the people. And we had the perfect land rights action already to file. And the chief said, no, no, no, no, you have left out some very fundamental ideas here. And they dictated that paragraph to us in the long house. And it got added as the first program. And it's really helps understand the cultural wisdom of Indigenous people and the Onondaga in terms of knowing that the primary

principle of their culture is preservation and stewardship and preserving land and water for future generations. And as opposed to, as we said before, exploitation and ruination. And having that in the land rights action and at the same time, they instructed our office and folks working with us to reach out to non-Indigenous citizens in the original territory and say, if you're being threatened by an environmental problem, and you're not getting relief you think you should from the agencies, contact us and we'll see if we can work together with you to protect the land and the water.

Joe Heath ([00:55:22](#)):

Well, you have to be careful what you ask for, is what we learned there, because there have been so many requests by non-Indigenous neighbors to work with Onondaga over the last 16 years, since that statement was recently made public, that's been the framework of our environmental work. It was how we work together with the African-American community on the south side to stop Nick Bureau's sewage plants from being shoved into African-American communities. It's how we work together with the people in Janesville and then scribe, where this New York city developer was trying to shove clean coal plants into their 500 feet from an elementary school. It's how we stopped an illegal golf course from going into a wetland up next to lake Ontario. Time and again, people have reached out to the nation and the nation and our office has worked with them to protect the land and the water in the ways that neither the DEC or the EPA had a clue about.

Joe Heath ([00:56:35](#)):

And it's their vision of stewardship and protection and understanding that from doing that job well, that's how we achieve a better relationship with all of the people that we work with and inner peace that allows us to continue to see what needs to be done and the wisdom of that statement and how it has played out and how people understand the Onondaga's care about the natural world. And we need to listen to them. And so that work is just that statement has been fundamental to the environmental work that we've been able to have some successes in, not everyone, but many times by working together as they call for, with their vision of protection and stewardship, many times we've had some achievements that I never thought we could get to.

Philip P. Arnold ([00:57:44](#)):

I'll just reflect here a little bit on my own career in 2005, I recall very well the filing of Onondaga's land rights action. That was also the year that we really became aware of the doctrine of Christian discovery. And we started first hearing from people like Oren Lyons, and Steve Newcomb at the United Nations and then brought this awareness back to I brought it back to my classroom and we really started working on it in 2005. And also I reflect on the fact that neighbors of the Onondaga nation or noon really got going after the land rights action.

Philip P. Arnold ([00:58:36](#)):

And we had a series of educational events including yourself a lot of different speakers, both non-native allies and the Haudenosaunee talking about a variety of topics for the larger Syracuse community. And this was co-sponsored with Syracuse University and others. We have held a year-long series in 2006 and another in 2010, I think. That land rights action created a major and educational opportunity, I'd say, for a lot of us working in this allies role too. Thank you for all of that. That's where things really got going, I think in a lot of ways,

Joe Heath ([00:59:37](#)):

Well and around the same time, you're right. I remember 2006 is the time when Oren and Sandy and I went out to some casino in Minnesota where another Indigenous lawyer was putting on a conference about, that involved the doctrine of discovery. And unfortunately, most lawyers who practice Indian law do not have a complete understanding of the doctrine and tend to dismiss it as the fundamental problem in the US Indian law. And I think part of that is the fact that so many Indigenous people have been Christianized and converted as part of the forced assimilation, that it's therefore harder to see the impacts of Christianity on your culture. But we went out there because this particular lawyer was saying, well, the doctrine really isn't that bad and the courts really haven't used it against Indian nations. And we really ought to just not get so concerned about this doctrine.

Joe Heath ([01:00:56](#)):

I heard Oren speak for two days to try to tell him how wrong he was, and on the way home, he said, you have to write the truth about this problem. And that's the basis of almost 10 years of work that went into my law review on the doctrine of Christian discovery. It's titled is, Its Fundamental Importance and US Indian Law and the Need for its Repudiation and Removal. That's an article that finally appeared in 2016. And we will provide the link to that. I wrote that because Oren and the council said, we need to have our position clearly stated so that when as the years go by, we can educate people to the incorrectness of saying that the doctrine is not used by the court and help people understand how fundamental it is in all rulings that are taking land in authority from Indian people.

Joe Heath ([01:02:13](#)):

And the doctrine became is just very critical, but there you're right. I have good conversations with Steve [Newcomb] with Peter D'Errico, with very few other lawyers seem to understand the depths of the problems within the doctrine. And hopefully that changing with the works of everybody, it is a fundamental problem. It's funny that more people in religions seem to understand this than Indian lawyers. I'm sure there's some lesson there that probably we don't want to get into.

Philip P. Arnold ([01:02:59](#)):

Well, I appreciate that comment. I resemble that comment. I'm not sure. I think the reason is that people in religion tend to look to origins. We tend to think about origins and when you're talking about fundamentals, our ears tend to perk up. I appreciate that we have had this relationship for so long, so many years, Sandy and I both value your friendship and turkeys friendship. And I think it is a productive one. Even though you're a recovering Catholic I try to convince you that religion than study of religion isn't about being an apologist necessarily, but just trying to get at the root of things. I do see that there's a sense of optimism. I wonder if we could conclude by your talking about next steps.

Philip P. Arnold ([01:04:07](#)):

Are you heartened by the efforts lately to recover the lost children that there's more energy galvanizing around pushing against pipelines, for example, for raising awareness of murdered and missing Indigenous women. There are a lot of different areas where Indigenous peoples are being involved and do you see that there's some hope for optimism or what would you consider to be sort of the next steps people listening here. What could they be involved with that would help alleviate the pain of the doctrine of discovery and move us more toward a viable future?

Joe Heath ([01:05:01](#)):

Well, let me start by saying that I'm somewhat encouraged. Things are better. Particularly in the last year and few months, since the murder of George Floyd, there's been a tremendous awakening in the United States about the problems of racism and systematic white supremacy and historic trauma. Whether we will really move forward from this awareness or not. I think history will tell us because I used to say up until a year or so ago, and it's still okay to be racist against Indians. And the primary example I used of that was the Washington football team, because if the Washington football team had been called the black skins, the name would have been changed decades ago, but despite the heroic efforts of Suzan Harjo and many other Indigenous activists, we could not get that pain to even begin to understand the horrible racism that the reference to Indian scalps, which is what Redskins means, 50 cents a piece for Indian scalps.

Joe Heath ([01:06:23](#)):

You can see the newspaper advertisements from the mid 18 hundreds. We no longer have the Redskins as our football team, but we still have tremendous racism throughout and particularly in upstate New York. And since that's where we are, since we are on Onondaga territory, and I'm sitting, looking out my window at one of the Onondaga small lakes that they enjoy prior to the colonization, and prior to this lake being taken away from them. I just read from a Tuscarora that works with the forestry school that this may be the lake that I went to and a peacemaker came to for the year that they took off.

Joe Heath ([01:07:17](#)):

We have to remember that this is Onondaga territory and that they are entitled to have almost a complete say in what happens to it environmentally. And then if we all work together to preserve the land and the water and to stop climate change, climate chaos, that perhaps we have some hope here. Yes it's very encouraging when a pipeline is stopped and yet we're not doing anywhere near enough along those lines to turn to save the Earth. And of course, there's Indigenous people that suffered the most from climate chaos. Yes, there is an increased awareness. At the same time, we have this horrendous, ugly, hate field backlash coming from Trump and company. And we were at a very, very difficult time in our Republic. Is voter suppression going to be the winner, or are we going to be able to move together so that everybody enjoys the benefits, not just 1% and that we work together and that we learn from the traditional ecological knowledge of Indigenous people.

Joe Heath ([01:08:48](#)):

We learn from the caring, compassionate ways that Indigenous communities take care of their citizens. We have so much to learn, and yes, it's a bit encouraging that we are beginning to listen to them more. And those of us who live in central New York are really, really fortunate to have the wisdom of the Haudenosaunee and the Onondaga available to us. When I think of how much I have learned in the last 50 years, and so much of it from sitting in that long house and listening, I've been very, very lucky, and I hope that whoever listens to this can understand the importance of working with Indigenous people to save mother land and to save the water, because everything else is secondary now. We only have two or three or four years. We have to do much more and we have to listen to the wisdom of the Indigenous people on the Onondagas.

Sandy Bigtree ([01:10:00](#)):

Thank you, Joe. It's been an incredible discussion today. Thank you for your life work. Many generations in the future will certainly benefit from your dedication. I guess we should wrap it up now. We're looking forward to our next discussion and meantime, we invite you all to check our website for more



information and there will be notes available on today's topic available to all of you. Be, well, my friends and we'll talk to you again soon.

Joe Heath ([01:10:44](#)):

Bye-bye.

Sandy Bigtree ([01:10:44](#)):

Bye-bye.

Jordan Brady Loewen ([01:10:47](#)):

Thank you to our guests, Joe Heath and our hosts, Phillip Arnold and Sandy Bigtree. The Producers of this podcast were Adam DJ Brett and Jordan Brady Loewen. Our intro and outro is social dancing music by Orris Edwards, and Regis Cook. This podcast is produced in collaboration to Syracuse University Engaged Humanities, and the department of religion along with Indigenous Values Initiative and the American Indian Law Alliance.